

Index File

Application No. UP-662-05 James D. and Mia M. Cunningham

The property is a single-family home located at
104 North Will Scarlet Lane (Route 1311) in the
Queens Lake subdivision.

Assessor's Parcel No. 7A2-10-EH-9

Application No. UP-662-05 is a request for a Special Use Permit to authorize an accessory apartment of approximately 515 square feet on the second story of a detached garage to be built.

Attachments:

1. Staff Report
2. Zoning Map
3. Plot Plan
4. Floor Plan
5. Building Elevations
6. Proposed Resolution No. PC05-14

COUNTY OF YORK

MEMORANDUM

DATE: February 28, 2005 (PC Mtg. 3/9/05)

TO: York County Planning Commission

FROM: Timothy C. Cross, AICP, Principal Planner

SUBJECT: Application No. UP-662-05, James D. and Mia M. Cunningham

ISSUE

This application seeks a Special Use Permit, pursuant to Section 24.1-407(b) of the York County Zoning Ordinance, to authorize an accessory apartment of approximately 515 square feet on the second story of a detached garage to be built in conjunction with an existing single-family detached home on a 0.81-acre parcel of land located at 104 North Will Scarlet Lane (Route 1311) in the Queens Lake subdivision.

DESCRIPTION

- Property Owner: James D. and Mia M. Cunningham
- Location: 104 N Will Scarlet Lane (Route 1311)
- Area: Approximately 0.81 acre
- Frontage: Approximately 60 feet on N Will Scarlet Lane
- Utilities: The property is served by a private water system and a septic system
- Topography: Steep and moderate slopes are present on most of the property.
- 2015 Land Use Map Designation: Low Density Residential
- Zoning Classification: RR – Rural Residential
- Existing Development: Single-family detached home
- Surrounding Development:
 - North: Single-family detached home
 - East: Single-family detached home
 - South: Single-family detached home
 - West: Queens Lake
- Proposed Development: Accessory apartment on the second story of a proposed detached garage

CONSIDERATIONS/CONCLUSIONS

1. The subject property is located in the Queens Lake subdivision, which is zoned RR (Rural Residential) and designated for Low Density Residential development in the *Comprehensive Plan*. The property owners wish to construct a detached garage, which is permitted as a matter of right as an accessory structure to a single-family detached home. There are no immediate plans to construct an accessory apartment, but the homeowners wish to install plumbing with the intention ultimately of creating a habitable area, including a bathroom, above the garage and are eager to proceed with construction, so they are requesting a use permit. This is why the floor plans submitted by the applicants depict the second story of the garage simply as storage rather than showing the living area and bathroom that they ultimately plan to construct and which would constitute an accessory apartment. They are eager to proceed with construction and thus are applying for a use permit in advance to allow them to establish the apartment at a latter date. Any detached accessory apartment, regardless of its size, can only be permitted upon the approval of a Special Use Permit.
2. Since accessory structures such as detached garages are, by definition of the Zoning Ordinance, “incidental and subordinate” to the principal use of the property on which they are located, they generally cannot be located closer to the front lot line than the principal building, nor can they be taller than the principal building. As shown on the sketch plan submitted by the applicant, the garage would be located in front of the existing home; however, because the principal building setback exceeds fifty feet (50’) in this case, the detached garage will be subject to a fifty-foot (50’) minimum building setback requirement. The proposed garage location as depicted on the sketch plan meets this requirement. In addition, accessory buildings are not permitted to be taller than the buildings to which they are accessory, except that pursuant to Section 24.1-231(a)(3) of the Zoning Ordinance, buildings that are accessory to single-story buildings can be constructed to a maximum height not exceeding 1.25 times the height of the principal building. Regardless of the actual building height, the garage/apartment may *appear* taller than the house as viewed from the street because of its location and the topography of the lot, which slopes steeply to the rear. Conditions of approval have been included in the proposed resolution to address both the building setback and height limitations.
3. Set forth in Section 24.1-407 of the Zoning Ordinance are performance standards for accessory apartments that limit the maximum number of accessory apartments to one per single-family detached dwelling, require adequate provisions for off-street parking, require occupancy only by family members or guests of the occupant of the principal dwelling, and prohibit the apartment from being rented separate from the principal dwelling. These standards have been included as conditions in the approving resolution.
4. The property is not served by sanitary sewer. The County plans to extend public sewer to the Queens Lake subdivision, but completion of this project is not expected before the 2006-2009 time frame. Section 24.1-497(h) of the Zoning Ordinance states

that for any property where public sewer is not available, approval of an accessory apartment shall be contingent on certification by the Virginia Department of Health that the on-site septic system is adequate to serve the total number of bedrooms proposed on the property. The Health Department has reviewed this application and has indicated that the addition of a bedroom will require either that the septic system be expanded (which may be impractical or infeasible because of the severe topography) or that occupancy be limited through the issuance of a conditional permit restricting the combined occupancy of the home and the accessory to no more than six (6) individuals. The conditional permit would have to be recorded as a deed restriction on the property and as such would be binding on any future purchaser of the property, at least until sanitary sewer becomes available. Staff has proposed a condition of approval addressing this requirement.

5. Property within the subdivision is not subject to homeowners' covenants nor does it fall under the jurisdiction of an established homeowners' association. Queens Lake has an association that is responsible for common areas and facilities such as the lake, pool, and clubhouse, but it has no architectural review authority and membership is voluntary. Regardless of any covenants that may be deeded, the County must evaluate the accessory apartment use within the context of the Zoning Ordinance and its standards. The County cannot be a party to the enforcement of private covenants, and approval of a Special Use Permit will not relieve the applicant of any responsibilities for compliance with any such covenants.

RECOMMENDATION

At 515 square feet, the proposed accessory apartment would be smaller than almost all that have been approved in recent years and would in fact be permitted as a matter of right if attached to the principal dwelling. Similarly, the detached garage also would be permitted by right if it were not to include a bathroom. Staff believes the subject property can accommodate the proposed accessory apartment with no adverse impacts on surrounding properties and in compliance with all applicable zoning regulations. Therefore, based on the considerations and conclusions as noted, staff recommends that the Commission forward this application to the Board of Supervisors with a recommendation of approval subject to the conditions contained in proposed Resolution No. PC05-14. Because the applicant does not have immediate plans to construct the accessory apartment, Condition No. 9 in the proposed Resolution extends the deadline for establishing the use from two years to three years, as provided for by Section 24.1-115(c)(1).

TCC

Attachments

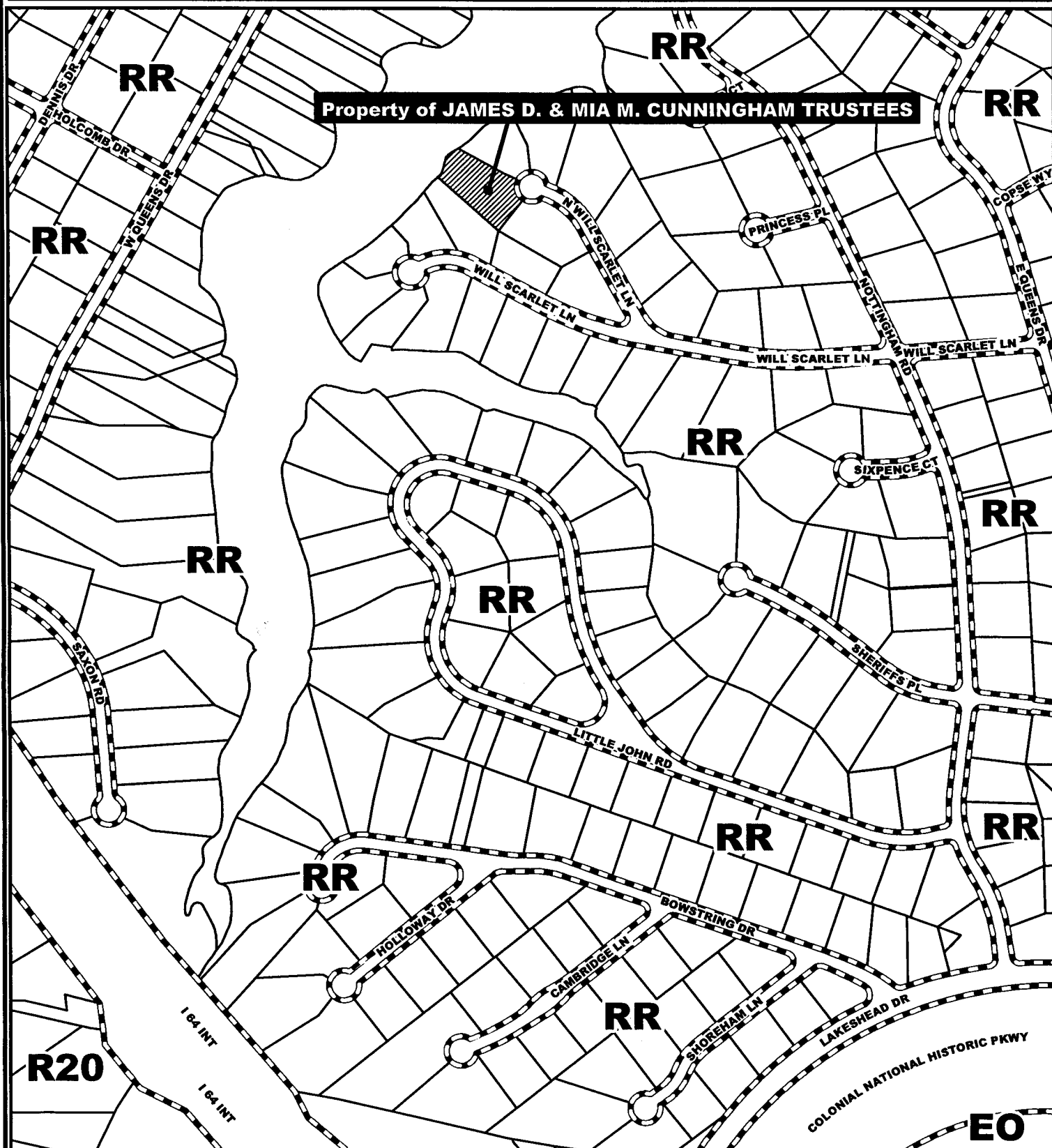
- Zoning Map
- Plot plan
- Floor plan
- Building elevations
- Proposed Resolution No. PC05-14

APPLICANT

James D. and Mia M. Cunningham
To authorize an accessory apartment
on the second story of a detached garage
104 N WILL SCARLET LN

ZONING MAP

APPLICATION NUMBER: UP-662-05



* = Conditional Zoning

0 225 450 900 Feet

Printed on February 07, 2005



LIBRARY TILE NUMBER:

Lr004

SOURCE: YORK COUNTY
GIS PARCEL DATA and
ZONING COVERAGE

THIS IS NOT A LEGAL PLAT.
This map should be used for
information purposes only. It is
not suitable for detailed site planning.

QUEENS
LAKE

2' ABOVE WATERLINE

THIS PROPERTY LIES WITHIN THE FEMA
DEFINED FLOOD ZONE X, AS NOTED ON
COMMUNITY-PANEL NUMBER 510182 0030 B
EFFECTIVE DATE: DECEMBER 16, 1988.

N 45°44'11" E 99.33'

IPF

90.56'

S 52°34'30" E

175.91' 1/2

LOT 8

2 ST BR &
FR DWL
43' X 40'

CONC WALK
1.2' OVER LINE

5.2'

N 38°30'30" W 267.20' 1/2

3 DOCK

ASPHALT DRIVE TO
BE REPAVED

NEW GARAGE

ASPHALT
DRIVE

17

O/H LINES

OPP

IPF

LOT 9
104 NORTH
WILL SCARLET LANE
34,771 SF +/-
0.81 AC +/-

70'

65'

30' BSL

17

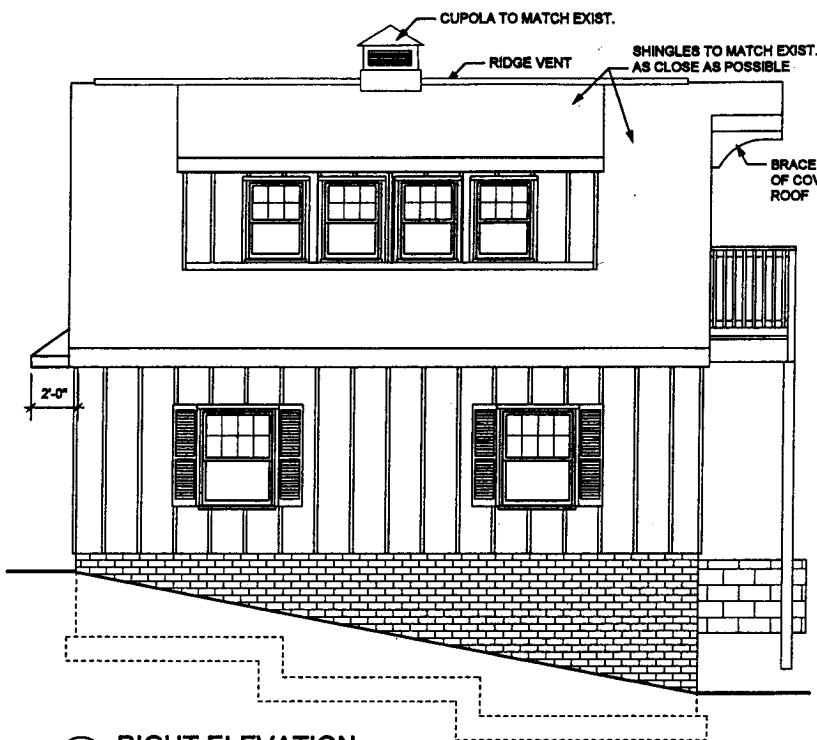
S 46°16'30" W 136.90'

IPF

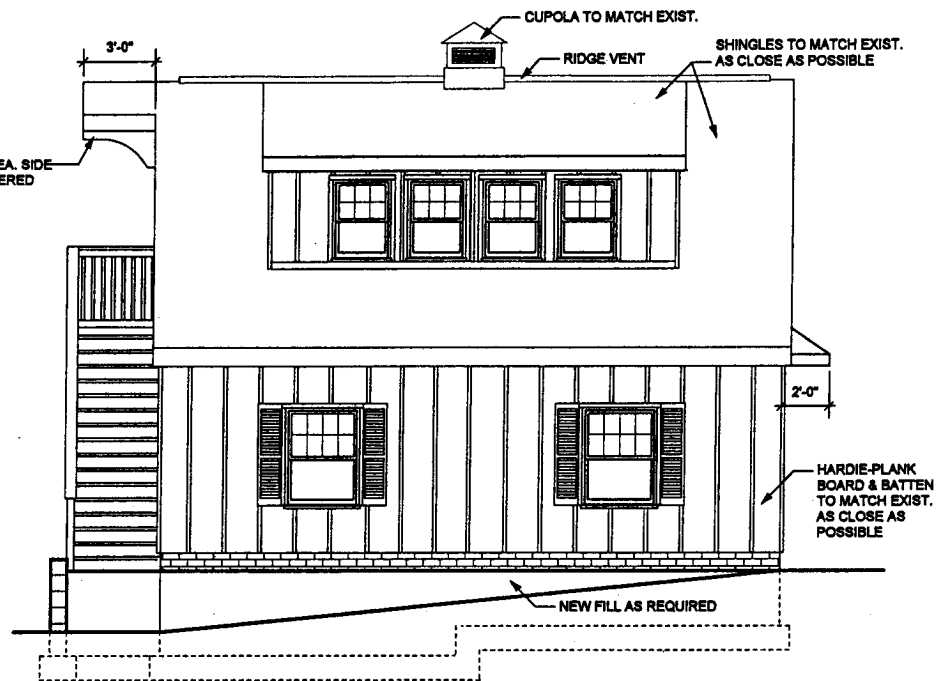
LOT 10

DRAINAGE ESM'T

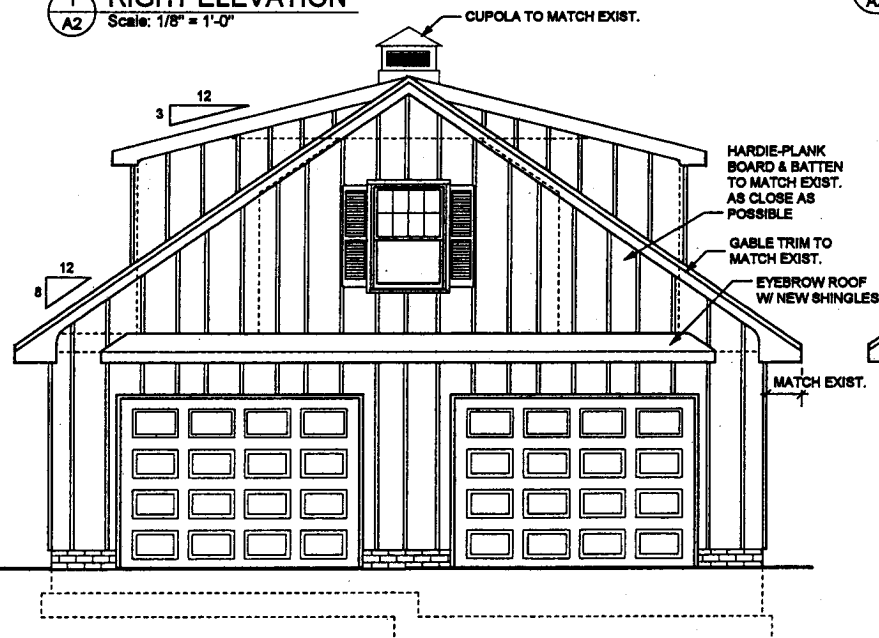
NORTH
WILL
SCARLET
LANE
50' R/W



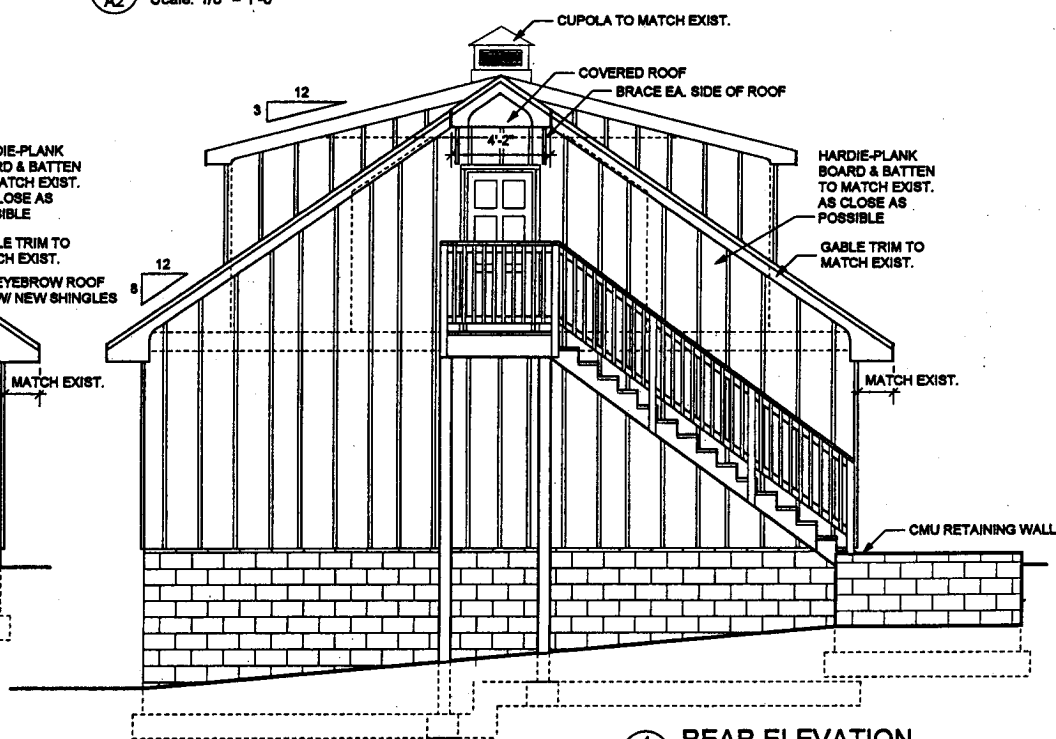
1 RIGHT ELEVATION
A2 Scale: 1/8" = 1'-0"



2 LEFT ELEVATION
A2 Scale: 1/8" = 1'-0"



3 FRONT ELEVATION
A2 Scale: 1/8" = 1'-0"



4 REAR ELEVATION
A2 Scale: 1/8" = 1'-0"

NOTE: NEW STAIR AND RAIL TO BE BUILT AS PER FAIRFAX COUNTY TYPICAL DECK DETAILS

PLANNING COMMISSION
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Planning Commission held in the Board Room, York Hall, Yorktown, Virginia, on the ____ day of ____, 2005:

Present

Vote

Andrew A. Simasek, Chair
Alfred E. Ptasznik, Jr., Vice Chair
Alexander T. Hamilton
John W. Staton
Nicholas F. Barba
Anne C. H. Conner
John R. Davis

On motion of ____, which carried ____, the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF A
SPECIAL USE PERMIT FOR A DETACHED ACCESSORY
APARTMENT AT 104 NORTH WILL SCARLET LANE

WHEREAS, James D. and Mia M. Cunningham have submitted Application No. UP-662-05, which requests a Special Use Permit, pursuant to Section 24.1-407(b) of the York County Zoning Ordinance, to authorize an accessory apartment of approximately 515 square feet on the second story of a detached garage to be built in conjunction with an existing single-family detached home on a 0.81-acre parcel of land located at 104 North Will Scarlet Lane (Route 1311) and further identified as Assessor's Parcel No. 7A2-10-EH-9 (GPIN# G15a-2261-4097); and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the ____ day of _____, 2005, that Application No. UP-662-05 be, and it is hereby, transmitted to the York County Board of Supervisors with a recommendation of approval to authorize a Special Use Permit, pursuant to Section 24.1-407(b) of the York County Zoning Ordinance, to authorize construction of an accessory apartment of approximately 515 square feet on the second story of a detached garage to be built in conjunction with an existing single-family detached home on a 0.81-acre parcel of land located at 104 North Will Scarlet Lane and further identified as Assessor's Parcel No. 7A2-10-EH-9 (GPIN# G15a-2261-4097) subject to the following conditions:

1. This Special Use Permit shall authorize construction of an accessory apartment of approximately 515 square feet on the second story of a detached garage to be built in conjunction with an existing single-family detached home on a 0.81-acre parcel of land located at 104 North Will Scarlet Lane and further identified as Assessor's Parcel No. 7A2-10-EH-9 (GPIN# G15a-2261-4097).
2. Building plans for the garage shall be submitted to and approved by the York County Department of Environmental and Development Services, Division of Building Regulation, prior to the commencement of any construction activities. Said plans shall be in substantial conformance with the plot plan and building elevations submitted by the applicant, copies of which shall remain on file in the Planning Division.
3. Prior to the issuance of a building permit for the garage/apartment, the applicant shall either expand the existing septic system in accordance with the standards of the Virginia Department of Health or record with the Clerk of the Circuit Court a deed restriction on the property limiting the combined occupancy of the principal dwelling unit and the accessory apartment to no more than six (6) individuals.
4. Construction and operation of the accessory apartment shall be in compliance with the performance standards set forth in Section 24.1-407 of the Zoning Ordinance.
5. The height of the garage/apartment shall not exceed 1.25 times the height of the principal dwelling on the property.
6. The minimum front yard building setback requirement for the garage/apartment shall be fifty feet (50').
7. Issuance of this Special Use Permit does not supersede any legally recorded restrictive covenants that may apply to the subject property, nor does it relieve the applicant and/or property owner of any obligation to secure approvals that

- may be required by a homeowners' association in accordance with said covenants.
8. In accordance with Section 24.1-407(k) of the County Zoning Ordinance, prior to issuance of a building permit for the accessory apartment, the applicant shall be responsible for recording a deed restriction document with the Clerk of the Circuit Court stipulating that the subject accessory apartment will be used, occupied and maintained in accordance with standards and restrictions set forth in Section 24.1-407 of said Ordinance. A Court-certified copy of the document shall be submitted to the County at the time of building permit application.
 9. Notwithstanding the customary two-year deadline for establishing special uses set forth in Section 24.1-115(c)(1), failure to establish the accessory apartment within three (3) years of the date of approval shall cause the permit to terminate automatically.
 10. In accordance with Section 24.1-115(b)(7) of the York County Zoning Ordinance, a certified copy of the resolution authorizing this special use permit shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court.